UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/CONF.152/C.2/SR.1
12 April 1991

ORIGINAL: ENGLISH

UNITED NATIONS CONFERENCE ON THE LIABILITY OF OPERATORS OF TRANSPORT TERMINALS IN INTERNATIONAL TRADE

SECOND COMMITTEE

SUMMARY RECORD OF THE 1st MEETING

Held at the Austria Center Vienna,
on Monday, 8 April 1991, at 9.30 a.m.

Chairman: Ms. J. VILUS (Yugoslavia)

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V.91 37063 0075E
Distr.: 15 April 1991

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The meeting was called to order at 10 a.m.

ADOPTION OF THE AGENDA (item 1 of the provisional agenda) (A/CONF.152/C.2/L.1)

1. The provisional agenda (A/CONF.152/C.2/L.1) was adopted.

ELECTION OF A VICE-CHAIRMAN AND A RAPPORTEUR (agenda item 2)

2. The CHAIRMAN invited nominations for the offices of Vice-Chairman and Rapporteur.

3. Mr. LARSEN (United States of America) suggested that the election of officers should be postponed until full consultations had been held.

4. It was so decided.

CONSIDERATION OF ARTICLES 17 TO 19, AND 21 to 25, OF THE DRAFT CONVENTION ON THE LIABILITY OF OPERATORS OF TRANSPORT TERMINALS IN INTERNATIONAL TRADE (agenda item 3) (A/CONF.152/5, 6 and 7 and Add.1 and Add.1/Corr.1 and Add.2)

5. The CHAIRMAN invited the Committee to consider the draft articles one by one.

Article 17

6. Article 17 was approved by 13 votes to none.

Article 18

7. The CHAIRMAN drew attention to paragraph 1, where it remained to be determined how long the Convention would be open for signature.

8. Mr. LARSEN (United States of America) said that the one-year rule applicable in other transport conventions would be acceptable to his delegation, as would a longer period if such was the desire of the Committee.

9. Mr. GORODISSKY (Union of Soviet Socialist Republics) supported the proposal for a one-year period.

10. The CHAIRMAN said she took it that the Committee agreed to insert the date 30 April 1992 at the end of article 18 (1).

11. It was so decided.

12. Article 18 was approved by 13 votes to none.

Article 19

13. Mr. HORNBY (Canada) said that his delegation had submitted a written proposal which had not yet been circulated. Its purpose was to amend article 19 (3) in such a way as to reflect the three criteria for the application of the Convention which were now contained in article 2 (Scope of application). The three criteria were place of business of the operator, place of performance of the transport-related services, and the rules of private international law. Article 19 (3), as it stood, referred only to the place of business. Pending receipt of his delegation's written proposal, he requested that the discussion on article 19 should be deferred.

14. Mr. SERVIGON (Philippines) said that his delegation was submitting written proposals on articles 19 and 21, and accordingly requested that consideration of both articles should be postponed.

15. It was so decided.

Article 22 (A/CONF.152/C.2/L.3, L.4, L.5)

16. The CHAIRMAN said that the three proposals that the Committee had before it relating to article 22 (1), submitted respectively by the United States of America (A/CONF.152/C.2/L.3), Germany (A/CONF.152/C.2/L.4) and the Netherlands (A/CONF.152/C.2/L.5), all concerned the number of ratifications required. The United States proposal was not an amendment, but merely expressed support for the existing provision that the Convention should enter into force when five States had ratified or acceded to it. The German and Netherlands proposals were identical and sought to replace the word "fifth" by "fifteenth" in article 22 (1), so as to require 15 ratifications or accessions for entry into force.

17. Mr. LARSEN (United States of America) said that his delegation's proposal was prompted by the long delayed entry into force of conventions requiring a large number of ratifications. An example was the Multimodal Convention of 1980, which required 30 ratifications and had still not entered into force. The draft Convention under consideration was a very useful instrument and was unique in that it applied to the internal affairs of States. His delegation therefore supported the Commission's conclusion in advocating ratification by five States.

18. Mr. HENGSTENBERG VON BORSTELL (Germany) said that, while he fully understood the United States concerns, his delegation favoured a larger number of ratifications - 15 being a reasonable figure - in order to secure broader acceptance of the Convention. There would be little point to the Convention if the courts of only five States applied its provisions.

19. Mr. HORNBY (Canada) said that his delegation supported a small number of ratifications for much the same reasons as the United States delegation. The Convention dealt essentially with matters of private international law, particularly domestic law. Most of the obligations it contained required States parties to bring their domestic law into line with the Convention, and if States wished to comply, they should be encouraged to do so. His delegation would even have accepted a smaller number of ratifications.

20. Mr. MARSHALL (United Kingdom) said that his delegation had originally expected the number of ratifications to tally with the number required in related transport conventions but, having heard previous speakers, would be prepared to agree to 15, which still allowed for wide international representativity. A convention ratified by only a few States would be meaningless.

21. Mr. FUJISHITA (Japan) and Mr. ZHANG Kening (China) expressed support for the text as it stood.

22. Mr. SERVIGON (Philippines), Mr. FARIDI ARAGHI (Islamic Republic of Iran) and Ms. STROLZ (Austria) expressed support for the German and Netherlands proposals.

23. The CHAIRMAN invited the Committee to vote on the German and Netherlands proposals.

24. The German proposal contained in document A/CONF.152/C.2/L.4 and the Netherlands proposal contained in document A/CONF.152/C.2/L.5 were rejected by 8 votes to 5.

25. Article 22 was approved by 8 votes to 3, with 1 abstention.

Article 23

26. Article 23 was approved by 13 votes to none.

Article 24

27. Mr. FARIDI ARAGHI (Islamic Republic of Iran), supported by Mr. ASTAPENKO (Byelorussian Soviet Socialist Republic), suggested that wording should be added to article 24 (7) to provide that the depositary would inform States parties of the entry into force of amendments.

28. The CHAIRMAN said she understood that the existing practice of the Secretary-General as depositary was to notify all States parties of the entry into force of amendments.

29. Mr. LARSEN (United States of America) said that, if the Vienna Convention on the Law of Treaties made provision for States to be notified of their obligations, he considered that to be sufficient. There needed to be the possibility of speedy adjustment in the Convention under discussion, so he supported the wording of article 24 (7) as it stood.

30. Mr. FARIDI ARAGHI (Islamic Republic of Iran) said that, as it was already the practice of the depositary to notify the entry into force of amendments, he could accept the text of paragraph 7 as it stood.

31. Mr. MARSHALL (United Kingdom) said that the inclusion of article 24 (2) might lead to the convening of a superfluous meeting. The possibility of changing the amounts stipulated in article 6 was adequately covered under articles 23 (1) and 24 (1); article 24 (2) was therefore unnecessary.

32. Mr. LARSEN (United States of America) said that erosion of amounts had been a serious problem with certain other conventions, and liability limits should be reviewed periodically. He therefore favoured the existing draft.

33. The CHAIRMAN drew attention to General Assembly resolution 37/107, on provisions for a unit of account and adjustment of limitations of liability adopted by the United Nations Commission on International Trade Law, which recommended that all international conventions containing limitation of liability provisions should contain a paragraph such as the one under discussion.

34. Mr. MARSHALL (United Kingdom) said that, in view of the lack of support for his suggestion, he would withdraw it.

35. Article 24 was approved by 12 votes to none.

Article 25

36. Article 25 was approved by 12 votes to none.

The meeting rose at 11 a.m.